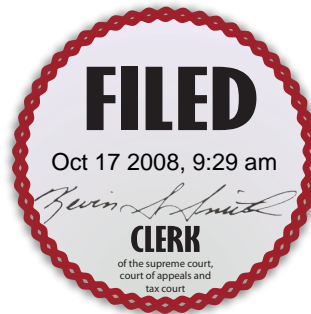


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

STEVEN J. BRUCE
Public Defender's Office
Muncie, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ARTHUR THADDEUS PERRY
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

VANESSA Y. LESLIE,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)

No. 18A04-0806-CR-336

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable John M. Feick, Judge
Cause No. 18C04-0609-FD-123

October 17, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

The trial court revoked Vanessa Leslie's probation and ordered her to serve her previously suspended sentence of eighteen months. On appeal, Leslie raises one issue, which we restate as whether the trial court abused its discretion when it ordered Leslie to serve her entire suspended sentence. Concluding the trial court's order was not an abuse of discretion, we affirm.

Facts and Procedural History

On September 11, 2006, the State charged Leslie with two counts of theft, both Class D felonies, and she pled guilty to one of them in exchange for the State's agreement to dismiss the other. On March 14, 2007, the trial court sentenced Leslie to eighteen months, all of which was suspended to probation. The terms of Leslie's probation included that she report in person at least monthly to her probation officer, that she notify her probation officer of any change of address, and that she pay restitution to the victim of her theft.

On January 10, 2008, the State filed a notice of probation violation alleging that Leslie failed to comply with the terms listed above. Following a hearing on May 7, 2008, at which Leslie and the probation officer testified, the trial court found that Leslie was in "direct violation" of the requirement that she report at least monthly to her probation officer and that Leslie had not paid restitution. Transcript at 30. Based on these findings, the trial court ordered that Leslie serve the entire eighteen months of her previously suspended sentence.

Discussion and Decision

Leslie argues the trial court improperly ordered her to serve the entire eighteen months of her previously suspended sentence. Indiana Code section 35-38-2-3(g) governs a trial court's authority to sentence a defendant in light of a probation violation:

If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may:

- (1) continue the person on probation, with or without modifying or enlarging the conditions;
- (2) extend the person's probationary period for not more than one (1) year beyond the original probationary period; or
- (3) order execution of all or part of the sentence that was suspended at the time of the initial sentencing.

“Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed.” Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007). As such, we review a trial court's sentencing decision following a probation revocation for an abuse of discretion. Sanders v. State, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), trans. denied. We will find an abuse of discretion “where the decision is clearly against the logic and effect of the facts and circumstances” before the trial court. Prewitt, 878 N.E.2d at 188. Stated differently, a trial court may abuse its discretion if the defendant, though found to have violated a term of probation, nevertheless offers substantial mitigating evidence demonstrating that the violation does not warrant revocation. See Woods v. State, 892 N.E.2d 637, 640 (Ind. 2008). In determining whether the trial court abused its discretion, we will consider the evidence most favorable to the trial court's decision and will not reweigh the evidence or judge witnesses' credibility. Sanders, 825 N.E.2d at 954-55.

During the May 7, 2008, probation revocation hearing, Leslie's probation officer testified that following an in-person meeting on May 9, 2007, she did not receive any communication from Leslie until February 21, 2008. On that date, Leslie sent a letter to her probation officer stating that she had been incarcerated in a Madison County jail since late-December 2007 on a charge of driving a vehicle while intoxicated. As for the lack of communication prior to her incarceration, Leslie testified that from June to August 2007, she attempted to contact her probation officer and left messages on numerous occasions, but "finally gave up." Tr. at 28. This testimony demonstrates Leslie was not too concerned about taking advantage of the leniency the trial court extended to her. As the trial court put it, "If that was me, I would have run over here the first thing and parked myself outside of [the probation officer's] office" Id. at 30. At any rate, in light of such indifference on Leslie's part, we are not convinced the trial court abused its discretion when it ordered her to serve the entire eighteen months of her previously suspended sentence.

Conclusion

The trial court did not abuse its discretion when it ordered Leslie to serve the entire eighteen months of her previously suspended sentence as a result of her probation violation.

Affirmed.

NAJAM, J., and MAY, J., concur.